

EXHIBIT A

Pizzotti & Jarnagin (925) 416-1800

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN ORTEGA
A MINOR, BY AND THROUGH HIS GUARDIAN
AD LITEM, ANA ROSA ORTEGA,

Plaintiffs,

vs.

NO. C-07-02659 JCS

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, IN HIS
CAPACITY AS THE POLICE CHIEF OF
THE CITY OF OAKLAND,

 COPY

Defendants.

DEPOSITION OF BENJAMIN ORTEGA

JANUARY 17, 2008

TAKEN BEFORE BARBARA JARNAGIN
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA
C.S.R. LICENSE NO. 2816



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ORTEGA BENJAMIN  January 17, 2008

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1 A. I would -- I was on 72nd -- excuse me, 62 at my
2 cousin's house.

3 Q. At some point during that day did you go to a
4 Cinco de Mayo festival?

5 A. No.

6 Q. At some point during that day, did you go to
7 the intersection of 62nd Avenue and International
8 Boulevard?

9 A. Yes.

10 Q. What time did you go to that intersection?

11 A. I don't remember.

12 Q. Why did you go to that intersection?

13 A. To go with my cousins.

14 Q. Why did you go with your cousins to that
15 intersection?

16 A. Just to be with them.

17 Q. Okay. What was -- what were you doing when you
18 were at the intersection of 62nd and International
19 Boulevard?

20 MR. JACOBSEN: Vague as to time. You mean when
21 he first arrived at the intersection?

22 BY MR. VOSE:

23 Q. When you first arrived at 62nd and
24 International Boulevard, what were you doing?

25 A. I went to McDonald's with my cousins -- with my

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1 **A. Video games.**

2 Q. Who was at the home with you while you were
3 there?

4 **A. I was inside with him, and outside everybody**
5 **else was outside, my other cousins.**

6 Q. Was Miguel Ortega with you at that time?

7 **A. Yes. He was outside.**

8 Q. At some point did you go back to the
9 intersection of 62nd and International?

10 **A. Yes.**

11 Q. You don't remember what time that was?

12 **A. No.**

13 Q. Why did you go to the intersection of 62nd and
14 International?

15 **A. Because all of my cousins who were at the house**
16 **went over there.**

17 Q. When you went to the corner of 62nd and
18 International, did you go with a group of people? I
19 mean, did you walk with a group of people?

20 **A. Yes.**

21 Q. And about how many people were in that group?

22 **A. I don't remember.**

23 Q. Was it more than 10 people?

24 **A. Yes.**

25 Q. Was Miguel Ortega part of that group?

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1 A. He was with us.

2 Q. Do you remember the names of any of the other
3 people that were in the group?

4 A. Yes.

5 Q. And who were they?

6 A. There were -- well, like three of them were my
7 cousins and some others. They were friends that live
8 near my cousins' house.

9 Q. What were the names of your cousins that were
10 in that group?

11 A. One of them, his name is Eduardo. And the
12 other one's name is -- may I ask my mom?

13 MR. VOSE: Sure.

14 (DISCUSSION BETWEEN THE WITNESS AND HIS
15 MOTHER.)

16 THE WITNESS: It's Jaime.

17 BY MR. VOSE:

18 Q. Any other cousins that you remember?

19 A. There were many cousins, but I hardly saw them
20 too well and I hardly remember.

21 Q. The two cousins that you just identified, do
22 you know where they live?

23 A. Only Eduardo.

24 Q. What is his address?

25 A. I don't know the house address, but I know that

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1 he lives -- he lives on 63rd.

2 Q. 63rd Avenue here in Oakland?

3 A. Yes.

4 Q. When you walked to the intersection of 62nd and
5 International, were you carrying a flag?

6 A. Could you repeat that for me again? I didn't
7 understand too well.

8 Q. When you walked to the intersection of 62nd and
9 International, were you carrying a flag?

10 A. Yes.

11 Q. And what was it a flag of?

12 A. It was Mexican flag.

13 Q. And how large was this flag?

14 A. It was big, but I do not remember.

15 Q. Where did you get the flag from?

16 A. From my cousins' house; the one that's on 63rd.

17 Q. So before you went to 63rd -- the corner of
18 62nd and International, did you go to your cousins'
19 house on 63rd Avenue?

20 A. No.

21 Q. When did you get the flag from your cousins'
22 house on 63rd Avenue?

23 THE INTERPRETER: The interpreter did not hear
24 that. Where or when?

25 BY MR. VOSE:

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1 Q. Where -- excuse me, when? I'm sorry, when?

2 A. Because first of all, we were on 63rd, and then
3 I went to 62nd.

4 Q. So you got the flag earlier in the day?

5 A. Yes.

6 Q. When you went to the intersection of 62nd and
7 International, what did you do when you arrived there?

8 A. My friend came by and we went to McDonald's.

9 Q. So you went back to McDonald's a second time?

10 A. No. First of all, we were on 63rd. Then we
11 went to 62nd. And it was then that my friend came by,
12 and it was then that we went to McDonald's. Only a
13 single time.

14 Q. So after you left McDonald's, did you go
15 immediately back to the house on 62nd Avenue?

16 A. Yes.

17 Q. You said you were at McDonald's for maybe five
18 or 10 minutes?

19 A. 10 minutes.

20 Q. And how long did it then take you to go back to
21 your -- to the house on 62nd Avenue?

22 A. Like about two minutes.

23 Q. Were you carrying a flag at that time?

24 A. Yes.

25 Q. So at some point did you return to the

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1 intersection of 62nd and International Boulevard that
2 day?

3 **A. Yes.**

4 Q. And that was after you left the house on 62nd
5 Avenue?

6 **A. Yes.**

7 Q. How long were you at the house on 62nd Avenue
8 after you returned from McDonald's and before you went
9 back to the intersection of 62nd and International?

10 **A. Like for about five minutes.**

11 Q. So you were at the house for about five
12 minutes, and then you went back to 62nd and
13 International?

14 **A. Yes.**

15 Q. What did you do when you arrived at the
16 intersection of 62nd and International?

17 **A. I was with my cousins.**

18 Q. What were you doing?

19 **A. Nothing. I was just standing.**

20 Q. Were you standing holding this flag?

21 **A. No. I had given it to my friend when I had
22 gotten to the corner.**

23 Q. I'm sorry, repeat that. I didn't hear your
24 answer.

25 (ANSWER READ BACK BY THE REPORTER.)

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1 Q. Okay. How far is the house from International
2 Boulevard, approximately?

3 A. I don't know, but it is very close by.

4 Q. Is it the first house on 62nd Avenue after you
5 come off of International Boulevard?

6 A. Yes.

7 Q. So when you walked up to 62nd and
8 International, did you stay on the same side of 62nd
9 Avenue as the house that you had come from or did you
10 cross 62nd Avenue?

11 A. No. I was on the same side.

12 Q. And did you cross International Boulevard or
13 did you stay on the same side of International
14 Boulevard?

15 A. No.

16 Q. Okay. How long were you at this intersection?

17 A. I don't remember.

18 Q. Was it more than five minutes?

19 A. Yes.

20 Q. Was it more than half an hour?

21 A. Yes.

22 Q. What were you doing while you were at this --
23 on this corner?

24 A. I was with my cousins.

25 Q. Were you -- what were you doing?

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1 **A. Nothing.**

2 Q. Were you talking with anyone?

3 **A. I don't remember.**

4 Q. Approximately how many people were with you on
5 this corner?

6 **A. I don't remember.**

7 Q. Was it more than 10 people?

8 **A. Yes.**

9 Q. And was Miguel Ortega one of the people on the
10 corner with you?

11 **A. Yes.**

12 Q. You said a few moments ago that when you
13 arrived at the corner, you gave the flag to a friend?

14 **A. Yes.**

15 Q. While you were on the corner of -- while you
16 were on this corner at some point did you get the flag
17 back from your friend?

18 **A. No.**

19 Q. So you never had possession of the flag shortly
20 after you arrived at this intersection?

21 **A. No.**

22 Q. Did you ever -- during the time you were at
23 this intersection, did you ever cross or walk into
24 International Boulevard?

25 **A. No.**

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1 Q. Did you ever carry the flag into International
2 Boulevard?

3 A. No.

4 Q. At some point did you make contact with two
5 Oakland Police Department police officers?

6 A. Could you explain that to me?

7 Q. At some point did two Oakland Police Department
8 officers talk to you?

9 A. Yes.

10 Q. And are those the two officers that have been
11 named in this lawsuit; Officer Ortiz and Officer
12 Alcantar?

13 A. Yes.

14 Q. And where were you when you first -- when they
15 first contacted you?

16 A. When I was crossing 14th, I'm coming from
17 McDonald's.

18 Q. So you first made contact with them when you
19 were coming back from McDonald's?

20 A. Yes.

21 Q. And where were you when you made -- when they
22 made contact with you? When I say "where were you,"
23 were you walking on the sidewalk or were you in the
24 street?

25 A. I was crossing International.

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1 Q. Okay. And at that time were you holding a
2 flag?

3 A. Yes.

4 Q. So when you went to McDonald's, you had the
5 flag with you?

6 A. Yes.

7 Q. What did the officers say to you; if you
8 remember?

9 A. Officer Alcantar said to me, "Throw that flag
10 before I shove it up your ass," yes.

11 Q. And was Officer Alcantar inside or outside of
12 his vehicle when he said that to you?

13 A. Inside the car.

14 Q. Was that car moving at the time he said that to
15 you?

16 A. Yes.

17 Q. How far away from the car were you when Officer
18 Alcantar said that to you?

19 A. I don't remember.

20 Q. Were you on the same side of the car as Officer
21 Alcantar was when he said that to you?

22 THE INTERPRETER: Madam Court Reporter, would
23 you kindly repeat that for the interpreter, please?

24 (RECORD READ BACK BY THE REPORTER.)

25 THE WITNESS: I don't remember.

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1 BY MR. VOSE:

2 Q. Was Officer Alcantar's window up or open when
3 he said that to you?

4 A. Open.

5 Q. Was there anyone else with you when Officer
6 Alcantar said this to you?

7 A. No.

8 Q. You were alone?

9 A. Yes. They were all at the house.

10 Q. So when you left McDonald's, you were not
11 walking with your cousin?

12 A. Not with my friend, no. It was my friend.

13 Q. It was your friend. So you were not walking --
14 I apologize.

15 You were not walking with your friend when you
16 returned from McDonald's?

17 A. No.

18 Q. Why did you take the flag with you to
19 McDonald's?

20 A. Because when we got there my friend was walking
21 toward McDonald's, and said to me -- and well, I was
22 going quickly. I was in a rush.

23 Q. So you took the flag with you?

24 A. Yes.

25 Q. And then you carried the flag back to the home

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1 on 62nd Avenue?

2 A. Yes.

3 Q. Were there other cars -- strike that.

4 You said when Officer Alcantar said this to
5 you, you were crossing International Boulevard?

6 A. Yes.

7 Q. Were you crossing in a crosswalk?

8 A. Yes.

9 Q. Was there a traffic light at this intersection
10 or this crosswalk where you were crossing?

11 A. Yes.

12 Q. And was the traffic light on International --
13 what color was this traffic light on International for
14 the traffic on International?

15 MR. JACOBSEN: Well, I will object. Lacks
16 foundation because he was not going in the same
17 direction as the traffic on International. He was
18 crossing International.

19 MR. VOSE: Right.. He was crossing
20 International.

21 What I'm trying --

22 MR. JACOBSEN: What's relevant and what he will
23 know is color for the traffic light for him.

24 MR. VOSE: 62nd Avenue; is that your point?

25 MR. JACOBSEN: Right.

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1 police officers.

2 Q. When Miguel said not to do anything to you,
3 were you still standing?

4 A. No. I was on the ground.

5 Q. On the ground.

6 A. Because when he hit me, I fell down quickly.

7 Q. So when Miguel said -- he said after you were
8 on the ground?

9 A. Yes. Because when he began to choke me, Miguel
10 began to run.

11 Q. So could you see Miguel running towards you?

12 A. Yes. Then the officer knocked me down quickly,
13 and I didn't see anything else.

14 Q. When Officer Alcantar came into the yard, did
15 you watch him come into this yard?

16 A. Yes.

17 Q. And he came through the gate?

18 A. Yes.

19 Q. And did he stop or did he come immediately up
20 to you?

21 A. He came to me immediately.

22 Q. And were you facing him when he came up to you?

23 A. Yes.

24 Q. And then he choked you and hit you in your neck
25 and you fell to the ground?

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1 A. Yes.

2 Q. And Miguel, once you were on the ground, Miguel
3 started running towards you?

4 A. No. It was when Alcantar was choking me and
5 then he hit me.

6 Q. That's when Miguel started running towards you?

7 A. Yes. And then when he handcuffed me, he bent
8 my wrist and he said to me that he was going to break
9 it.

10 Q. Now, you said when officer -- excuse me, when
11 Miguel was coming towards you, that Officer Ortiz
12 grabbed him and knocked him to the ground?

13 A. Yes.

14 Q. And could you see -- did you see that happen?

15 A. When I was on the ground, I looked toward
16 Miguel. And the officer grabbed him and knocked him
17 down, with other police officers.

18 Q. How many other police officers besides Officer
19 Ortiz knocked Miguel to the ground?

20 A. I don't remember.

21 Q. How far away from you was Miguel when he was
22 knocked to the ground?

23 A. I don't remember.

24 Q. Was Miguel on the porch or was he in the yard
25 when he was knocked to the ground?

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1 **A. Yes.**

2 Q. Do you remember when you stopped working at
3 McDonald's?

4 **A. Two weeks ago.**

5 Q. And how many hours a week did you work?

6 **A. Like about eight hours a week.**

7 MR. VOSE: Do we need a break?

8 Off the record.

9 (ONE-HOUR LUNCH RECESS TAKEN.)

10 MR. VOSE: I want to start with not questions
11 to the witness, but actually a discovery issue. Steve,
12 your client testified this morning about the pictures
13 that he had of his injuries, as well as various doctors
14 that he went to because of his injuries and bills that
15 he or his parents may have received as a result of these
16 injuries. Are you planning on producing these?

17 MR. JACOBSEN: Well, I'm surprised the pictures
18 didn't get produced already.

19 MR. VOSE: I asked -- when I asked for the
20 interrogatories, I asked a number of questions and I
21 have them here, if you want to look at them. Then my
22 production for documents, I asked for all documents that
23 support or tend to support your answers to
24 interrogatories. And included among are the assault and
25 battery allegations.

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1 bills, that we have and everything that's pertinent.

2 MR. VOSE: I'm going to not conclude the
3 deposition today. I will recess it with the -- leave
4 the option open to bring Benjamin back after I review
5 these documents. I don't know that I will want to
6 question him, quite frankly, but I want to reserve that
7 right because I think I should have had them by now.

8 I'm not suggesting to delay this mediation.

9 Jim might have a different feeling about it. But
10 because they are pertinent, I believe I have asked for
11 them on behalf of the city, and I think he would have
12 the right to object to that as well.

13 But I will leave -- the right to recall your
14 client to questions about those matters if I decide or
15 Jim decides if he wants to do that, as well. I want to
16 put that on the record.

17 MR. JACOBSEN: Let's go off the record and I
18 will make a phone call.

19 MR. VOSE: Sure.

20 (7-MINUTE RECESS TAKEN.)

21 MR. VOSE: Let's go back on the record.

22 Q. Did Officer Alcantar at any time make any
23 comment about your race?

24 A. He just simply asked me if I had my green card.
25 If all of us, if my cousins and I, if we had our green

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1 Q. Is that when Officer Alcantar came into the
2 yard and grabbed you?

3 A. Yes.

4 Q. Before that time -- strike that.

5 Was Officer Alcantar speaking English when he
6 said things to your brother?

7 A. Yes.

8 Q. Is that why you responded to him in English?

9 A. Yes.

10 Q. Had Officer Alcantar indicated up to that point
11 whether or not he spoke Spanish?

12 A. He said that he didn't speak Spanish.

13 Q. To whom did he say that?

14 A. My cousin.

15 Q. That was before he came into the yard and
16 grabbed you?

17 A. Yes.

18 MR. JACOBSEN: No more questions. Thank you.

19 MR. HIGA: I don't have anything.

20 MR. VOSE: I don't have anything.

21 Based on your representations that there are no
22 other documents in you or your clients' possession that
23 are responsive to the discovery, I will on that basis
24 conclude the deposition. If, however, other documents
25 surface that your client has testified to regarding that

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1 do subsequently appear, I do reserve the right to
2 continue this deposition to ask him about those
3 documents, if I decide to.

4 And in your initial disclosure you do indicate
5 one of the categories of information that you have is
6 medical records. So I still have questions about the
7 existence of these medical records since your client has
8 testified regarding medical treatment that he received.

9 So I will reserve the right to question him
10 about any medical records that should subsequently
11 appear in this case.

12 MR. JACOBSEN: Well, medical records will be a
13 part of the evidence in this case. However, at this
14 point we are not in possession of any medical records or
15 bills.

16 MR. VOSE: I understand that you may not be,
17 but if your clients are in possession of these medical
18 records, or anyone that attempt to call, then those are
19 documents that you have a duty to disclose and had a
20 duty to disclose at the time I propounded my request for
21 production of documents.

22 MR. JACOBSEN: No. First, neither my office
23 nor my clients have any medical records or bills.
24 However, Kaiser does have medical records. And at some
25 point it is conceivable that bills will be created. And

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1 at that point they would be presented -- when we get
2 them, we will give them to you.

3 But that doesn't give you the right to have a
4 second of the plaintiff about documents that he does not
5 have in his possession or control.

6 MR. VOSE: Well, I disagree with that. I think
7 you have a duty to produce those records. If you intend
8 to use them at trial, since you have disclosed their
9 existence, and your initial disclosure. So we don't
10 have to decide this today, but ultimately this is an
11 issue the judge will decide.

12 I'm not waiving my right to question your
13 client about any of these records that could be produced
14 at a later time. I believe we don't have to agree on it
15 today. I wanted the record. If we end up with a motion
16 to compel in front of Judge Spear, we had this
17 conversation and this is memorialized.

18 MR. JACOBSEN: I understand that, and I will
19 point out my client would have no knowledge of the
20 records or bills other than the fact that he has been to
21 the doctor. And he wouldn't be able to answer questions
22 with regard to any records or bills. Those records will
23 speak for themselves.

24 And perhaps medical professionals can answer
25 your questions regarding them, but certainly my client

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1 wouldn't be in a position to do it. He can tell you
2 everything of the treatment he received and he has done
3 that to the extent that you have asked him.

4 MR. VOSE: But on a number of occasions he
5 testified that he does not have any memory of the
6 treatments or the number of treatments, who he saw or
7 when he saw them.

8 So those medical records may refresh his memory
9 with respect to who he saw, when he saw them, how many
10 treatments he received, both for physical injuries as
11 well as his mental and emotional injuries.

12 So as I said, we don't have to argue a motion
13 to compel here today. I just wanted to make it clear
14 I'm not waiving my right to recall him to ask him
15 further those questions that he has no memory about. If
16 I have medical records it might refresh his memory or
17 might shed some other light on some issue or damages or
18 injuries in this case.

19 So that's all I'm saying. So with that we will
20 consider this in recess, and thank you, everyone.

21 THE REPORTER: Would you like a copy of this
22 transcript?

23 MR. VOSE: Yes.

24 MR. JACOBSEN: Yes.

25 MR. JACOBSEN: Yes. Condensed and index.